

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CRIMINAL PETITION No.8555 OF 2012

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ORDER:

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This is a Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/A2 requesting to quash the proceedings against him in C.C.No.232/2012 on the file of the learned II Additional Judicial Magistrate of First Class, Nizamabad taken on file for contravention of Section 7(i)&(ii) 2(ix)(k) and punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short, 'the Act').

2. I have heard the submissions of the learned counsel for the petitioner/A2 and of the learned Public Prosecutor representing the respondent-State. I have carefully perused the material record.

3. Now the point for determination is – 'Whether the petitioner/A2 has made out valid and sufficient grounds for quashing the proceedings against him in C.C.No.232/2012 on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Nizamabad?'

4. **POINT:**

4. (a) The prosecution case including the gravamen of the charge is as under: 'On 19.04.2011 at about 6.30 PM the Food Inspector, Division-I, Nizamabad, along with his office subordinate, had visited Jai Bhavani Sweet Home situated at Dharpally village of Nizamabad District. At that time

R.P.Gowtham (A1) was in the said sweet home and was transacting the business. On inspection, the said Food Inspector had found 20 Nos. of 250 ML glass bottles of King Fishers strong non-alcoholic soft drink (Sweetened carbonated water) besides other food articles. On enquiry by the said Food Inspector about the stocking of the said soft drink bottles, A1 had stated that it is meant for sale for human consumption. But, he had failed to disclose the source of supply of the same. Having suspected the said food articles to be adulterated, the Food Inspector had purchased, from out of the above said stock, three bottles of soft drink after paying Rs.66/- towards costs to A1 and had also obtained cash receipt for the same. One sample, as per the procedure, was despatched by the Food Inspector on 20.04.2011 to the Public Analyst of Nacharam. The Food Inspector had also submitted, on the same day, the remaining two samples to the Assistant Food Controller and Local (Health) Authority. On 30.05.2011, the Food Inspector had received a report from the Public Analyst; and, in that report it was opined as follows:

‘SAMPLE DOES NOT CONFORM TO THE STANDARD OF TOTAL PLATE COUNT AND ADDITION OF ADDED SUGAR IS NOT MAINTAINED ON THE MANUFACTURERS LABEL OF THE BOTTLE. Therefore, it is ADULTERATED AND MIS BRANDED.’

(reproduced verbatim)

The labels of the soft drink bottles contained the following details:

Batch No.	Date of manufacture	Details of manufacturer
040FPOA273	03/2011	M/s. Five Star Beverages, Arepally Warangal-6 (A2)

After receiving the license particulars of A2, the Food Inspector had submitted a detailed report to the Director, IPM, Food & Health

Authority, Narayanaguda, Hyderabad. A written consent to file the complaint was issued by the said authority on 31.12.2011. Therefore, the Food Inspector had filed a private complaint against A1 and A2.'

4. (b) The case of the petitioner/A2 and the submissions on his behalf, in brief, are as follows: 'The complaint was filed by the Food Inspector before the Court of the learned II Additional Judicial Magistrate of First Class, Nizamabad on 07.02.2012. The learned Magistrate had taken cognizance on 19.04.2012 and notice was issued to the petitioner/A2 on 25.04.2012 under Section 13(2) of the Act. The said notice was issued beyond the mandatory period prescribed under the Act. The seized sample was admittedly not produced before the Court within seven days as required under sub-section (4) of Section 11 of the Act, but was placed before the Court when the complaint was filed. The sample was seized on 19.04.2011; and notice under Section 13(2) of the Act was issued to the petitioner/A2 on 25.04.2012. There has been delay of about one year in filing the complaint and in issuing the notice. The food article is best for use before six months from the date of its manufacture. Thereby, A2 had lost his valuable right under Section 13(2) of the Act. The continuation of the proceedings against A2 is an abuse of the process of the Court. Hence, the calendar case against A2 is liable to be quashed.'

4. (c) The learned Additional Public Prosecutor, having submitted the chronology of events and having read the portions of the complaint, had submitted that because of the delay no prejudice has been caused to A2. He had placed reliance on the Division Bench judgment of this Court in **M/s. Handi Instant**

Foods, Chennai Vs. State of A.P.^[1] and had further contended that unless prejudice is shown to have been caused to the accused herein, the proceedings cannot be quashed.

4. (d) I have given earnest consideration to the facts and the submissions. In the case on hand, the sample was seized on 19.04.2011. The sample was sent to Public Analyst on 20.04.2011. The Food Inspector received the analyst's report on 30.05.2011. He had obtained consent orders from his superior authority on 31.12.2011. It is not disputed that the Food Inspector had filed the complaint before the Magistrate on 07.02.2012 and that he had produced the samples before the Magistrate along with the said complaint. The learned Magistrate had taken cognizance on 19.04.2012. On 25.04.2012, a notice under Section 13(2) of the Act was issued to A2. Section 11 (4) of the Act mandates that an article of food seized under sub-section (4) of Section 10 and any adulterant seized under sub-section (6) of Section 10 shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the Public Analyst. However, the seized sample admittedly was not produced before the Court within seven days as required under sub-section (4) of Section 11, but was placed before the Court on 07.02.2012 when the complaint was filed. Therefore, there has been a clear violation of the mandatory stipulation contained under Section 11(4) of the Act regarding production of sample before the Court. It is not in dispute in this case that the label contains a caution that it is best for use before six months. The said fact indicates that the contents of the sample would be in tact without undergoing any process of degeneration or decomposition for a period of six months from the date of manufacture. It is not in

dispute that the month of manufacture of the food article is March 2011. The six months period was over by September 2011. The sample was placed before the Court almost more than eight months after the receipt of the report of the public analyst. There is absolutely no explanation from the Food Inspector for the abnormal delay in production of the sample before the Court especially when the packing label cautions that the contents are best for use before six months only.

4. (e) Now coming to the aspect of delay, in the case of **Handi Instant Foods, Chennai v. State of AP** (1 supra) relied upon by the learned Additional Public Prosecutor, the question that was referred to the Division Bench was – ‘whether the prosecution under the Prevention of Food Adulteration Act can be quashed merely on the ground of delay without there being any prejudice to the accused?’ The Division Bench having referred to the ratios in various precedents had held as follows: -

‘It is clear that Section 13(2) of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of a copy of the report of the Public Analyst to get the samples of food analysed in the central Food Laboratory and in case the sample is found by the Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. That would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not *per se* be fatal to the prosecution case, even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay.’

A reading of the Division Bench decision of this court would show that delay is *per se* not fatal to the prosecution case in cases where the sample continues to remain fit for analysis in spite of the delay and when no prejudice is caused to the accused. In the

case on hand, the packing label cautions that the content of the bottle, i.e., the food article, which is soft drink, is best for use before 180 days from the date of its manufacture. Section 13(2) of the Act confers on the accused a valuable right. Under the said provision, the accused can make an application to the Court, within a period of ten days from the receipt of the copy of the report of the Public Analyst, to get the samples of food analysed in the Central Food Laboratory. And, in case the sample is found, by the Central Food Laboratory, unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of the prosecution, that valuable right would stand denied and that would itself constitute prejudice to the accused entitling him to acquittal. In the case on hand, due to delay of one year in giving the notice under Section 13(2) of the Act, the right of the accused to send the second sample to Central Food Laboratory for analysis for obtaining second opinion is virtually defeated. Therefore, in the facts and circumstances of the case, it cannot be said that no prejudice has been caused to the A2. Therefore, the ratio in the above decision is not helpful to the respondent-State.

4. (f) In **Girishbhai Dahyabhai Shah v. C.C.Jani and another**^[2], the facts and ratio are as under: 'A sample of curd was collected on 08.04.1988 and thereafter, there was a delay of 15 months in serving the public analyst's report on the first sample on the accused and that delay lead to the deterioration of the second sample and the accused was prevented from applying for analysis of the second sample before 17.07.1989, i.e., till 15 months after the sample has been collected and that by that time, the second sample of curd had deteriorated and was not fit

for being analyzed.’ In the light of the above facts, the Hon’ble Supreme Court while setting aside the judgment of the High Court had quashed the proceedings against the accused.

4. (g) Reverting to the facts of the instant case, it must be held that the accused is deprived of his valuable right under Section 13(2) of the Act to seek permission of the Court to send the second sample for second analysis to the Central Food Laboratory. On this ground alone, the accused is entitled to an acquittal. The view of this court finds support from the decision in **Ruchi Infrastructure Ltd., Mumbai v. Food Inspector, Nalgonda District**^[3].

4. (h) In view of the principles laid down in the above decisions and in view of the fact that there has been inordinate delay in filing the complaint and producing the second sample before the Court, and as the same has resulted in deprivation of the valuable right conferred on A2 under Section 13(2) of the Act, this Court holds that no purpose would be served by continuing the prosecution against the petitioner/A2. Accordingly, the proceedings initiated against A2 in C.C.No.232 of 2012 on the file of the learned II Additional Judicial Magistrate of First Class, Nizamabad are held liable to be quashed.

5. In the result, the Criminal Petition is allowed and the proceedings in C.C.No.232/2012 on the file of the learned II Additional Judicial Magistrate of First Class, Nizamabad against the petitioner/A2 are quashed.

Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

19th January 2015
MVA

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[\[1\]](#) 2007 (1) ALD (CrI.) 316 (AP)
[\[2\]](#) **(2009) 15 Supreme Court Cases 64**
[\[3\]](#) 2008(2) ALD (CrI) 711 (AP)